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Attorneys for Defendants, THE BANK OF NEW YORK MELLON FKA THE
BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS
OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-HY3, MORTGAGE
PASSTHROUGH CERTIFICATES, SERIES 2006-HY3 (incorrectly sued as
THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS
TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC.,
ALTERNATIVE LOAN TRUST 2006-HY3, MORTGAGE PASSTHROUGH
CERTIFICATES, SERIES 2006-HY3, a national association) and
RESIDENTIAL CREDIT SOLUTIONS, INC., a Delaware corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHERRY MANNELLO, an individual,) Case No. 2:15-cv-08669 GW (GJSx)
))
Plaintiff,) **DEFENDANTS' VERIFIED**
) **ANSWER TO PLAINTIFF'S**
vs.) **COMPLAINT**

THE BANK OF NEW YORK MELLON)
FKA THE BANK OF NEW YORK AS)
TRUSTEE FOR THE)
CERTIFICATEHOLDERS OF CWALT,))
INC., ALTERNATIVE LOAN TRUST)
2006-HY3, MORTGAGE)
PASSTHROUGH CERTIFICATES,)
SERIES 2006-HY3, a national)
association; RESIDENTIAL CREDIT)
SOLUTIONS, INC., a Delaware)
corporation; QUALITY LOAN)
SERVICE CORPORATION, a)
California corporation; and DOES 1)
through 10, inclusive,)
))
Defendants.)

1 4. Defendants admit the allegations of Paragraph 4 of the Complaint.

2 5. Defendants lack sufficient information or belief to answer the
3 allegations contained in Paragraph 5 of the Complaint and therefore deny
4 generally and specifically the allegations therein.

5 6. Defendants lack sufficient information or belief to answer the
6 allegations contained in Paragraph 6 of the Complaint and therefore deny
7 generally and specifically the allegations therein.

8 **BACKGROUND FACTS**

9 7. Defendants admit the first sentence of Paragraph 7 of the Complaint.
10 As to the second sentence of Paragraph 7 of the Complaint, Defendants admit and
11 aver that the loan was an adjustable interest rate loan obtained in December 2012,
12 under which the starting interest rate of the loan continued from that date until
13 January 1, 2013 at which time it would adjust. Otherwise, Defendants deny the
14 remaining allegations of Paragraph 7 of the Complaint.

15 8. Defendants admit the allegations of Paragraph 8 of the Complaint.

16 9. As to the allegations of Paragraph 9 of the Complaint, Defendants
17 admit that BNYM is THE BANK OF NEW YORK MELLON FKA THE BANK
18 OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF
19 CWALT, INC., ALTERNATIVE LOAN TRUST 2006-HY3, MORTGAGE
20 PASSTHROUGH CERTIFICATES, SERIES 2006-HY3 and deny that BNYM it
21 is the master servicer of Plaintiff's loan.

22 10. Defendants admit and aver that the loan was an adjustable rate
23 interest loan which Plaintiff obtained in December 2012, and under which the
24 starting interest rate of the loan continued from that date until January 1, 2013, at
25 which time it would adjust. Otherwise, Defendants deny the remaining
26 allegations of Paragraph 10 of the Complaint.

27 11. Defendants admit and aver that as of November 1, 2012, Plaintiff
28 was in default on her loan and that Plaintiff and RCS were in contact with each

1 other regarding loss mitigation on Plaintiff's loan. Otherwise, Defendants deny
 2 generally and specifically the remaining allegations of Paragraph 11 of the
 3 Complaint.

4 12. Defendants admit and aver that Plaintiff defaulted on her loan
 5 payments by failing to make the monthly loan payment due November 1, 2012
 6 and each month thereafter. Otherwise, Defendants lack sufficient information and
 7 belief as to the reasons for Plaintiff's default, and therefore deny generally and
 8 specifically that Plaintiff stopped making payments on her loan based upon any
 9 alleged conduct of RCS.

10 13. Defendants admit and aver that on September 11, 2014, a Notice of
 11 Default recorded against the real property which was given as security for
 12 Plaintiff's loan. Otherwise, Defendants deny the remaining allegations of
 13 Paragraph 13 of the Complaint.

14 14. Defendants admit and aver that during the month of June 2015,
 15 Plaintiff submitted a loan modification application packet to RCS, that RCS
 16 denied the application during the month of July 2015, that Plaintiff attempted to
 17 appeal that denial and RCS denied that appeal during the month of July 2015.
 18 Otherwise, Defendants deny generally and specifically the remaining allegations
 19 of Paragraph 14 of the Complaint.

20 15. Defendants admit and aver that on September 4, 2015, a Notice of
 21 Trustee's Sale recorded. Otherwise, Defendants deny the remaining allegations of
 22 paragraph 15 of the Complaint.

23 **FIRST CLAIM FOR RELIEF**

24 **(FOR VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 2923.5**

25 **Against all named Defendants and DOES 1 through 25, inclusive)**

26 16. As for the allegations of Paragraph 16 of the Complaint, Defendants
 27 repeat, reallege and incorporate herein by reference each and every averment set
 28

1 forth in the preceding paragraphs 1 through 15 of the Complaint herein as though
2 fully set forth in full.

3 17. As for the allegations of Paragraph 17 of the Complaint, Defendants
4 admit that California Civil Code Section 2923.5 speaks for itself.

5 18. Defendants deny generally and specifically all of the allegations of
6 Paragraph 18 of the Complaint.

7 19. Defendants deny generally and specifically all of the allegations of
8 Paragraph 19 of the Complaint, and specifically deny that any conduct on behalf
9 of Defendants was willful, deliberate or in conscious disregard of the rights of
10 Plaintiff.

11 **SECOND CLAIM FOR RELIEF**

12 **(FOR VIOLATIONS OF CALIFORNIA CIVIL CODE SECTION 2924.11**

13 **Against all named Defendants and DOES 1 through 25, inclusive)**

14 20. As for the allegations of Paragraph 20 of the Complaint, Defendants
15 repeat, reallege and incorporate herein by reference each and every averment set
16 forth in the preceding paragraphs 1 through 19 of the Complaint herein as though
17 fully set forth in full.

18 21. As for the allegations of Paragraph 21 of the Complaint, Defendants
19 admit that California Civil Code Section 2924.11 speaks for itself.

20 22. Defendants admit and aver that during the month of June 2015,
21 Plaintiff submitted a loan modification application packet to RCS, that RCS
22 acknowledge receipt of the loan modification application package but that RCS
23 denied the application during the month of July 2015, that Plaintiff attempted to
24 appeal that denial and RCS denied that appeal during the month of July 2015, and
25 that a Notice of Trustee Sale recorded on September 4, 2015. Otherwise,
26 Defendants deny generally and specifically the remaining allegations of Paragraph
27 22 of the Complaint.

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1 23. Defendants deny generally and specifically all of the allegations of
2 Paragraph 23 of the Complaint.

3 24. Defendants deny generally and specifically all of the allegations of
4 Paragraph 24 of the Complaint, and specifically deny that any conduct on behalf
5 of Defendants was willful, deliberate or in conscious disregard of the rights of
6 Plaintiff.

7 **THIRD CLAIM FOR RELIEF**
8 **(FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
9 **AND FAIR DEALING**

10 **Against all BNYM, RCS and DOES 1 through 25, inclusive)**

11 25. As for the allegations of Paragraph 20 of the Complaint, Defendants
12 repeat, reallege and incorporate herein by reference each and every averment set
13 forth in the preceding paragraphs 1 through 24 of the Complaint herein as though
14 fully set forth in full.

15 26. Defendants lack sufficient information or belief to answer the
16 allegations contained in Paragraph 26 of the Complaint in that Plaintiff has failed
17 specifically to identify the contract which she alleges was formed between her and
18 any predecessor in interest of BNYM, and therefore is unable to further respond to
19 the allegations of Paragraph 26 of the Complaint.

20 27. As to the allegations of Paragraph 27 of the Complaint, Defendants
21 deny that they have breach any covenant of good faith and fair dealing with
22 respect to Plaintiff or any contract Plaintiff had or may have had with Defendants.

23 28. Defendants deny generally and specifically all of the allegations of
24 Paragraph 28 of the Complaint and specifically deny that Plaintiff has suffered
25 damages of any kind or in any amount whatsoever.

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FOURTH CLAIM FOR RELIEF

(FOR INJUNCTIVE RELIEF

Against all named Defendants and DOES 1 through 25, inclusive)

29. As for the allegations of Paragraph 29 of the Complaint, Defendants repeat, reallege and incorporate herein by reference each and every averment set forth in the preceding paragraphs 1 through 28 of the Complaint herein as though fully set forth in full.

30. As to the allegations of Paragraph 30 of the Complaint, Defendants admit and aver that a Notice of Default recorded on September 11, 2014 and that a Notice of Trustee's Sale recorded on September 4, 2015. Otherwise, Defendants deny generally and specifically the remaining allegations of Paragraph 30 of the Complaint.

31. Defendants deny generally and specifically all of the allegations of Paragraph 31 of the Complaint.

32. Defendants deny generally and specifically all of the allegations of Paragraph 32 of the Complaint.

33. Defendants deny generally and specifically all of the allegations of Paragraph 33 of the Complaint.

FIFTH CLAIM FOR RELIEF

(FOR UNFAIR BUSINESS PRACTICES

Against all named Defendants and DOES 1 through 25, inclusive)

34. As for the allegations of Paragraph 34 of the Complaint, Defendants repeat, reallege and incorporate herein by reference each and every averment set forth in the preceding paragraphs 1 through 33 of the Complaint herein as though fully set forth in full.

35. Defendants deny generally and specifically all of the allegations of Paragraph 35 of the Complaint.

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1 36. Defendants deny generally and specifically all of the allegations of
2 Paragraph 36 of the Complaint and specifically deny that Plaintiff has suffered
3 damages of any kind or in any amount whatsoever.

4 **PRAYER FOR RELIEF**

5 Defendants deny that Plaintiff is entitled to any relief requested in
6 Paragraphs 1 through 8 of her Prayer for Relief.

7 **AS AND FOR THEIR SEPARATE AFFIRMATIVE DEFENSES,**
8 **DEFENDANTS HEREBY ALLEGE AND AVER AS FOLLOWS:**

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim)**

11 Defendants allege that Plaintiff has failed to state facts sufficient to
12 constitute any claim for relief against Defendants.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(No Proximate Cause)**

15 Defendants allege that the purported acts and/or omissions of Defendants,
16 as alleged in Plaintiff's Complaint, were not the actual or proximate cause of the
17 loss or damage, if any, for which Plaintiff seeks recovery.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Direct and Proximate Result of Other Parties)**

20 Defendants allege that Defendants are neither liable nor responsible for the
21 alleged damages or injuries to Plaintiff, if any, because any such damages or
22 injuries were the direct and proximate result of the independent and intervening
23 negligence and/or intentional conduct of Plaintiff and/or other parties and their
24 agents, servants and/or employees.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 Defendants allege that Plaintiff's claims in the Complaint are barred in
4 whole, or in part, because of Plaintiff's failure to take reasonable steps to mitigate
5 her damages, if any.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Unclean Hands)**

8 Defendants allege that Plaintiff's claims in the Complaint are barred by the
9 equitable doctrine of unclean hands due to Plaintiff's own conduct.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Waiver)**

12 Defendants allege that, by reason of her own acts and omissions, Plaintiff
13 has waived her rights and is, therefore, estopped from asserting the claims in the
14 Complaint against Defendants.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Estoppel)**

17 Defendants allege that, by reason of her own acts and omissions, Plaintiff
18 is estopped from asserting the claims in the Complaint against Defendants.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Consent)**

21 Defendants allege that Plaintiff has waived and is, therefore, estopped from
22 asserting any claim or claims against Defendants in the Complaint, since Plaintiff
23 has consented, or is deemed to have consented, to the conduct complained of in
24 the Complaint.

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NINTH AFFIRMATIVE DEFENSE

(Justification/Privilege)

Defendants allege that Plaintiff's claims in the Complaint are barred since Defendants' conduct as alleged in the Complaint, if any, was justified and/or privileged.

TENTH AFFIRMATIVE DEFENSE

(Contractual Damages Only)

Defendants allege that the rights and remedies of Defendants and the other parties to this action are governed, where applicable, by the terms and conditions of the contracts and agreements between them relating to the subject matter of this action.

ELEVENTH AFFIRMATIVE DEFENSE

(Off Set)

Defendants allege that the court should off-set against any award which may be made to Plaintiff, the amount owing by the Plaintiff to Defendants.

TWELFTH AFFIRMATIVE DEFENSE

(Comparative Fault of Plaintiff)

Defendants allege that any damages sustained by Plaintiff were caused by Plaintiff's own acts, errors, negligence or omissions and, therefore, any award in favor of Plaintiff should be reduced by that proportion of fault.

THIRTEENTH AFFIRMATIVE DEFENSE

(Comparative Indemnity and Contribution)

Defendants allege that they are entitled to contribution from any party found jointly and severally liable, and are entitled to indemnity and contribution as proven at trial under equitable principles.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 **(Good Faith Conduct)**

3 Defendants allege that Plaintiff is not entitled to any relief against
4 Defendants because Defendants acted in good faith and in a commercially
5 reasonable manner with respect to the subject matter of this action.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 **(Acts Contractually Authorized)**

8 Defendants allege that Plaintiff agreed to be governed by the terms and
9 conditions of the Promissory Note and Deed of Trust and the actions of
10 Defendants were authorized pursuant to the terms and conditions thereof.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 **(No Liability for Conduct of Agents)**

13 Defendants allege that, if any party to the action is alleged to be the agent
14 of Defendants, such party's alleged acts and omissions were not authorized or
15 ratified by Defendants, and, therefore, Defendants are not liable for such conduct
16 vicariously.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 **(Assumption of Risk)**

19 Plaintiff, at all material times, calculated, knew and understood the risks
20 inherent in the situations, actions, omissions and transactions upon which she now
21 bases her various claims for relief, and with such knowledge, Plaintiff undertook
22 and thereby assumed such risks and is consequently barred from all recovery by
23 such assumption of risk.

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

25 **(Insufficient Particularity)**

26 The Compliant does not describe the claims against Defendants with
27 sufficient particularity and certainty to enable Defendants to determine what
28 defenses may exist. Defendants reserve the right to assert all defenses that may be

1 pertinent to or arise from Plaintiff's claims against it when the precise nature of
2 those claims have been ascertained.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 **(Attorneys' Fees and Costs)**

5 The initiation of this action has compelled Defendants to engage the law
6 firm of Wright, Finley & Zak, LLP, and to incur the fees and costs occasioned
7 thereby. Upon prevailing herein, Defendants are entitled to the award thereof.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 **(Compliance with Statutes)**

10 At all times relevant to the Complaint, Defendants complied with all
11 applicable state and federal statutes.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 **(Lack of Damages)**

14 Plaintiff has suffered no damages as a result of any of the alleged acts or
15 omissions of Defendants.

16 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

17 **(Reservation of Defenses)**

18 Defendants presently have insufficient knowledge or information on which
19 to form a belief as to whether it may have additional, as yet unstated, defenses
20 available. Defendants reserve herein the right to assert additional defenses in the
21 event discovery indicates that they would be appropriate.

22 **WHEREFORE**, Defendants pray for judgment as follows:

- 23 1. That Plaintiff takes nothing by reason of the Complaint on file
24 herein;
25 2. For reasonable attorney's fees;
26 3. For costs of suit incurred herein; and

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1 4. For such other and further relief as the court may deem just
2 and proper.

3 Respectfully submitted,

4 **WRIGHT, FINLAY & ZAK, LLP**

5 Dated: November 9, 2015

By: /s/ Patricia L. Penny

6 T. Robert Finlay, Esq.

7 Patricia L. Penny, Esq.

8 Attorneys for Defendants, THE BANK OF
9 NEW YORK MELLON FKA THE BANK
10 OF NEW YORK AS TRUSTEE FOR THE
11 CERTIFICATEHOLDERS OF CWALT,
12 INC., ALTERNATIVE LOAN TRUST
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22 PASSTHROUGH CERTIFICATES,
23 SERIES 2006-HY3, a national association),
24 and RESIDENTIAL CREDIT
25 SOLUTIONS, INC., a Delaware
26 corporation
27
28

VERIFICATION

I, M. Yvette Howard, am an Assistant Vice President of Defendant RESIDENTIAL CREDIT SOLUTIONS, INC. ("RCS") a defendant in this action. I am authorized to make this verification on behalf of both RCS as well Defendant THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2006-HY3, MORTGAGE PASSTHROUGH CERTIFICATES, SERIES 2006-HY3 ("BNYM"), as RCS is the attorney-in-fact for BNYM.

I have read the foregoing VERIFIED ANSWER TO THE COMPLAINT in the matter of SHERRY MANNELLO v. THE BANK OF NEW YORK MELLON, etc., et. al, U.S. District Court Central District of California, Case No. 2:15-cv-08669-GW-GJS, and know its contents. The same is true of my own knowledge except as to those matters stated upon information and belief, and to the extent that there are legal conclusions as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and this verification was executed on this 9th day of November 2015, in Fort Worth, Texas.

By: 
Declarant

PROOF OF SERVICE

I, L. ROBLEY, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 200, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On November 9, 2015, I served the within **DEFENDANTS' VERIFIED ANSWER TO PLAINTIFF'S COMPLAINT** on all interested parties in this action as follows:


Aidan W. Butler, Esq.
Attorney at Law
3550 Wilshire Blvd, Suite 1924
Los Angeles, CA 90010
Email: tocontactaidan@gmail.com

Attorney for Plaintiff,
Sherry Mannello

☒ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(b)(2)(E). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

☒ (Federal) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 9, 2015, at Newport Beach, California.



L ROBLEY